



IAC-AH-CO-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/44128/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20th January 2016**

**Decision & Reasons Promulgated
On 19th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MRS SINDIJA SOJA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs E Lagunja (Counsel)

For the Respondent: Mr E Tufan (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge M A Khan, promulgated on 7th July 2015, following a hearing at Hatton Cross on 19th June 2015. In the determination, the judge dismissed the appeal of Mrs Sindija Soja. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Latvia and was born on 22nd February 1982. She appealed against the decision of the Respondent Secretary of State dated 29th October 2014, rejecting the application of Wemimi Olatubosun Onasanya for a residence card as confirmation of his right of residence as the Sponsor of an EEA national, exercising treaty rights in the United Kingdom. The relevant legal position is Regulation 26 of the Immigration (European Economic Area) Regulations 2006.

The Judge's Findings

3. The question before the judge was whether the Appellant was exercising treaty rights and was in a genuine marriage with Mr Onasanya, the national of Nigeria. The judge first observed at the outset that, "the Appellant was not in attendance at the hearing, she is not legally represented" (see paragraph 2). However, during the course of the determination, the judge then stated that, "the Appellant and her husband were in attendance at the hearing and therefore their witness statements remain unchallenged by way of cross-examination ..." (paragraph 26). None of this follows at all because even if there were witness statements for them, the fact that they were in attendance, did not preclude cross-examination by the Presenting Officer, whom the judge had found to be present at the hearing.
4. The point of more immediate concern, however, is that this statement is contrary to what was said at the outset of paragraph 2, namely that the Appellant was not in attendance. A further concern, however, was the judge's statement again at the outset (see paragraph 3) that,
"The Notice of Appeal was served on the Appellant 1/6/2015. She has not attended the hearing. The Appellant has not provided an explanation as to her reasons for non-attendance. The Respondent's representative submits that the hearing of this appeal should proceed in the absence of the Appellant..."

Grounds of Application

5. The grounds of appeal state that the Appellant and his legal representatives were not on notice for the hearing and that the decision was sent to the previous representatives of the applicant, and the decision was then sent to the old address, with the Appellant only becoming aware of the decision on 21st October 2015 when the old address was visited.
6. On 9th November 2015, permission to appeal was granted by Judge Ransley, in what appears to have been a careful enquiry by the judge into the circumstances of the Appellant. He observed that the court file shows that the notice of 19th June 2015 hearing was issued by the AIT to the Appellant and to a former representative, Kalam Solicitors on 1st June 2015. Judge Ransley also observes that the court file contains an appeal bundle filed by Victory Solicitors on behalf of the Appellant on 13th May 2015, and received by the AIT on 14th May 2015. It is not clear why the

AIT's computer record was not amended between 14th May 2014 and 1st June 2015 to reflect the change of the Appellant's legal representative.

7. On 24th November 2015, a Rule 24 response was entered by the Secretary of State to the effect that the First-tier Tribunal Judge had recorded that, "the Notice of Appeal was served on the Appellant on 1st June 2015, she has not attended the hearing; the Appellant has not provided an explanation as to the reasons for her non-attendance".

The Hearing

8. At the hearing before me on 20th June 2016, Mrs Lagunja, appearing as Counsel on behalf of the Appellant, submitted that she had all along been instructed as Counsel in this appeal, and was awaiting to be instructed by her solicitors to attend the court hearing in order to appear at the Appellant's appeal. In January 2015 a notice of hearing was received but this was for 18th May 2015. Then in February 2015 the Appellant instructed Victory Solicitors and left Kalam Solicitors. Victory Solicitors then sent the bundle for 18th May 2015 hearing.
9. However, on the afternoon of 15th May 2015, the Tribunal called Victory Solicitors and told them that the hearing had been adjourned for 18th May 2015. Thereafter problems ensued. At some stage after 1st June 2015 notices were allegedly sent out by the Tribunal but were not received by Victory Solicitors. Nor, were they received by the Appellant at her address. This will not be surprising, given that normally, when solicitors are instructed, notices go out to the solicitors. These notices informed the parties that the new date for the hearing was 19th June 2015.
10. Neither the Appellant nor Victory Solicitors received this notice. The hearing came and went. At that hearing Judge M A Khan appears to have wrongly concluded that notice was sent to the Appellant and her solicitors. In such a case, Rule 28 of the Procedure Rules is relevant. This states that,
 - "If a party fails to attend the hearing the Tribunal may proceed with the hearing if the Tribunal
 - (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
 - (b) considers that it is in the interests of justice to proceed with the hearing."

Mrs Lagunja submitted that neither of these conditions could be satisfied.

11. For his part, Mr Tufan submitted that it did appear that Judge Ransley had investigated the position fairly thoroughly and had concluded that notice is not set out properly by the Tribunal to Victory Solicitors. In fact, Judge Ransley makes it clear that the notice was issued to former

representatives, Kalam Solicitors on 1st June 2015. This would not have been done.

Error of Law

12. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. This is a case where Rule 28 applies. The parties failed to attend the hearing. The Tribunal could not have been satisfied that reasonable steps have been taken to notify the party of the hearing and could not have been satisfied that it was in the interests of the justice to proceed. All the evidence suggests that Victory Solicitors were not informed, as the proper legal representatives at that point in time, and neither, for that matter, was notification sent to the Appellant herself. In these circumstances, Practice Statement 7.2(a) applies and the Appellant has been deprived of a right to a full and fair hearing. The proper course of action is to remit this matter back to the First-tier Tribunal, to be determined by a judge other than Judge M A Khan at the first available opportunity.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge. I allow this appeal to the extent that it is remitted back to the First-tier Tribunal to be heard by a judge other than Judge M A Khan at Hatton Cross at the first available opportunity. Notices should be sent out to both the Appellant and her representatives at the proper address in the appropriate manner so as to ensure that there is attendance by all the parties concerned.

No anonymity order made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

13th February 2016